Supreme Court of the United States.

No. 203—October Term, 1952.

In the Matter
of
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Debtor.

THE CITY OF NEW YORK,
Petitioner,
—against—
THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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Opinions Below.

The opinion of the District Court (R. 103-116) is reported in 105 F. Supp. 413. The Court of Appeals for the Second Circuit affirmed upon the opinion of the court below, with one judge writing a dissenting opinion (R. 120-133). This is reported in 197 F. 2d 428.

Jurisdiction.

The jurisdictional requisites are adequately set forth in the petition at page 4.

Question Presented.

The basic question presented for review is whether the courts below correctly decided that petitioner's pre-bankruptcy statutory liens on respondent's real property for unpaid assessments for public improvements were forever barred and discharged by petitioner's negligent or deliberate failure to take any steps in the bankruptcy court to establish and protect them during respondent's twelve-year reorganization, of which petitioner had actual knowledge, despite the existence of a published bar order requiring all creditors' claims to be filed in the bankruptcy court and petitioner's knowledge that respondent had always refused to pay these outstanding assessments or recognize their validity.

Statutes Involved.

The portions of Section 77 of the Bankruptcy Act (11 U. S. C. A., § 205) which are directly involved are printed in Appendix A, *infra*, pages 21-23.

Statement of the Case.

Petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit is here sought to review the affirmance by that court of an order made in the United States District Court for the District of Connecticut granting the relief there requested by respondent.

The principal facts relied upon by respondent, The New York, New Haven and Hartford Railroad Company (hereinafter called the New Haven) in order to secure relief in the District Court against petitioner, The City

of New York (hereinafter called the City), are set forth below.

From 1894 to 1930 the City laid upon certain real property belonging to the New Haven in Bronx County a number of assessments for local improvements (R. 2, 7-17). The New Haven has refused to pay these assessments ever since they were laid, on the ground that they were void as a matter of law (R. 3, 19-20). The New Haven did not seek review of these assessments by means of the procedures provided for that purpose, because under New York law an assessment which is void as a matter of law remains void whether or not such review is obtained (R. 19-20). Under the law of New York, each assessment, insofar as valid and not void, became a first and prior lien in favor of the City against the specific real property upon which it was laid, until paid in full, but gave rise to no personal liability on the part of the New Haven (R. 2, 3, 30).

On October 23, 1935 proceedings for the reorganization of the New Haven under Section 77 of the National Bankruptcy Act were commenced in the United States District Court for the District of Connecticut (R. 2). Nearly twelve years later, on September 18, 1947, a consummation order and final decree concluding these reorganization proceedings became effective (R. 3).

Under the terms of Order No. 32 in these proceedings, issued on January 4, 1936 pursuant to Section 77 (c) (7) of the Bankruptcy Laws, claims of creditors of the New Haven were required to be filed or evidenced by May 1, 1936, and after that date no claim not so filed or evidenced might participate except on order for cause shown (R. 47). Under this order, creditors were directed to set forth in their claim the nature of any security for the claim and the facts with respect to any lien, priority or preferential classification claimed (R. 48). The terms of this order were published, among other places, in the

Wall Street Journal in New York City once a week for two consecutive weeks (R. 22, 48-49).

The City had actual notice of the New Haven's reorganization proceedings by June of 1936 or earlier, but never at any time has it filed or evidenced a claim for its unpaid assessments and the liens therefor or sought to intervene in the reorganization proceedings or petitioned for leave to file a claim (R. 22).

The assessed property has at all times been in the exclusive possession and control of the New Haven or its reorganization trustees (R. 2).

Nowhere in the plan of reorganization, the order confirming the plan, the consummation order and final decree, or the trustees' deed pursuant thereto is there any specific reference to the City's unpaid assessments (R. 68-77, 84-96, 20).

Section L of the plan of reorganization, the only section which could possibly apply to the City's claim, provided that claims against the debtor entitled to priority over their respective mortgages, and current liabilities and obligations incurred by the bankruptcy trustees during the reorganization proceedings, to the extent unpaid at the date of confirmation of the plan, were to be paid in cash or assumed by the reorganized company with the same relative priority as they now have with respect to other obligations of the debtor (R. 91). This section plainly referred only to claims filed in and approved by the bankruptcy court or specifically referred to in the plan.

The order confirming the plan made it binding upon all creditors, secured or unsecured, whether or not they were adversely affected by the plan, whether or not they filed claims, and whether or not they accepted the plan (R. 75-76). It further declared that the property dealt with by the plan, when transferred and conveyed to the re-

organized company pursuant to the plan, was to be free and clear of all claims of creditors and of all liens and encumbrances, except such as might be reserved in the plan, in this order or in the order of transfer and conveyance (R. 76).

The consummation order and final decree stated that upon the consummation date all the business, affairs, and entire property and estate of the debtor and its trustees were to vest in and become the absolute property of the reorganized company, free and clear of all claims, rights, demands, interest, liens and encumbrances of creditors of the debtor or its properties, except for those specifically referred to therein (R. 84). The consummation order released and discharged the debtor forever from all of its obligations, debts and liabilities, whether or not presented or allowed in the reorganization proceedings, and from all claims enforcible against its property, except those claims to be paid or assumed in accordance with the plan of reorganization (R. 84). The consummation order provided that all mortgages, bonds, notes, securities, obligations, debts and liabilities without limitation as to their nature, whether enforcible against the debtor or its property, were to become void and unenforcible against the reorganized company or its property, unless specifically provided for therein (R. 85). Finally, the consummation order contained a broad protective injunction to insure its enforcement that included a perpetual restraint against enforcing liens against the reorganized company's real property (R. 87-88).

The deed from the trustees of the debtor to the reorganized company transferred the real property held by the former free and clear of all claims, rights, demands, interests, liens and encumbrances of creditors except those imposed by the consummation order (R. 20).

Since September 18, 1947 when the consummation order went into effect the New Haven has repeatedly at-

tempted to sell, and to collect awards for the taking of, its real property in the Bronx free and clear of the City's pre-bankruptcy assessments and liens, but the City has refused to cancel any such assessments and liens of record without receiving payment in full, though requested to do so (R. 3).

In paragraph 2 of Section XI of the consummation order the bankruptcy court reserved jurisdiction in sub-paragraph (d) to consider and act in the matter of any application for instructions with respect to the distribution of funds or securities in connection with the consummation order and to construe the plan of reorganization as to matters which may require construction, not dealt with in the consummation order, and in sub-paragraph (q) to take such further action as may be necessary to put into effect and carry out the plan of reorganization, the consummation order, and all other orders relative thereto previously issued (R. 88, 90).

The New Haven brought the present petition before the bankruptcy court to obtain instruction whether or not the plan of reorganization and the consummation order require the payment or assumption of any of the City's pre-bankruptcy assessments outstanding against the New Haven's real property in the Bronx, or make any reservations in favor of such assessments (R. 5). In the event that the court found that no such requirements or reservations existed, the New Haven asked the court to declare its real property subject to such assessments free and clear of all liens therefor, to restrain the City from enforcing or attempting to enforce these liens, and to direct the City to cancel of record all such assessments (R. 5).

The court granted the petition of the New Haven in all respects, finding no requirement or reservation favorable to the City in the plan of reorganization or the con-

summation order and granting the full declaratory, injunctive and mandatory relief requested (R. 97-98).

The Court of Appeals affirmed on the opinion of the court below, with one judge dissenting (R. 120-133).

Argument.

The City in its brief (pp. 12-15) advances as principal reasons for the granting of its petition that the decision sought to be reviewed raises important, undecided questions of federal law and is in conflict with decisions of courts of appeal for other circuits and of this Court. Neither ground has any merit. Furthermore, the decision below was manifestly correct.

(a)

No important, undecided question of federal law was decided by the court below.

That the terms "creditors" and "claims" in Section 77 (b), 11 U. S. C. A., § 205 (b), of the National Bankruptcy Act include the City and its liens is self-evident from the definition there given of those words. "Creditors" are in part defined to "include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act." "Claims" are in part defined to include "liens or other interests of whatever character." The City, as the holder of a lien against property of the debtor, unequivocally came within the literal wording of the statutory definitions.

That these words are to be given their broadest possible construction is clear from previous decisions of this Court as to the meaning of the definitions of "creditors" and "claims" in former Section 77 B (b) (10) of the

Bankruptcy Act in *Foust* v. *Munson S. S. Lines*, 299 U. S. 77 (1936); in former Section 1 (9) of the Bankruptcy Act in *American Surety Co.* v. *Marotta*, 287 U. S. 513 (1933); and in Section 77 (b) of the Bankruptcy Act in *Gardner* v. *New Jersey*, 329 U. S. 565 (1947). In the last-named case, this Court said (p. 573):

> "The words 'all holders of claims' have no qualification and are sufficiently broad to include public agencies as well as private parties. The 'claims' of creditors include secured and unsecured claims. We find not the slightest suggestion that Congress left out the large class of tax claims which recurringly appears in reorganizations and often assumes, as here, large proportions. They are expressly included among provable claims in § 57 n of the Bankruptcy Act, 52 Stat. 840, 867, 11 U. S. C. § 93 (n). And the sweeping, all-inclusive definitions of 'claims' and 'creditors' in § 77 leave room for no exception under it."

This Court went on to say (pp. 575-6):

> "New Jersey contends that Congress did not include a State's tax liens within the scheme of § 77 proceedings. That is but another way of saying that since the State's asserted liens attached before the reorganization petition was filed, the only property of the debtor *in custodia legis* was its equity after the tax liens were satisfied.
>
> "We do not agree with that conclusion. We partially answered the contention when we reviewed the broad, all-inclusive nature of the definitions of 'creditors' and 'claims' contained in § 77 (b). As those definitions make plain, 'all holders of claims' include those who assert 'liens' against the property of the debtor.
>
> "Section 77 (b), moreover, gives the reorganization court broad powers over all types of liens. Thus

a plan of reorganization 'shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise.' § 77 (b) (1). A plan of reorganization may provide for 'the sale of all or any part of the property of the debtor either subject to or free from *any lien* at not less than a fair upset price.' § 77 (b) (5). (Italics added). It may order 'the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein.' *Id.* Or it may provide for 'the satisfaction or modification of *any liens*' or 'the curing or waiver of defaults' *Id.* (Italics added.) This is comprehensive language suggesting that all liens are included, not that some are beyond the reach of the court."

In addition, this Court reviewed the disastrous consequences of a less broad interpretation as follows (p. 577):

"If the reorganization court lacked the power to deal with tax liens of a State, the assertion by a State of a lien would pull out chunks of an estate from the reorganization court and transfer a part of the struggle over the corpus into tax bureaus and other state tribunals. That would not only seriously impair the power of the court to administer the estate and adversely affect the power of the Interstate Commerce Commission and the court to promulgate a reorganization plan. See *Ecker* v. *Western Pacific R. Corp.*, 318 U. S. 448, 466-475; *Smith* v. *Hoboken Railroad, W. & S. C. Co.*, 328 U. S. 123. It would fly in the teeth of § 77 (a), which grants the reorganization court 'exclusive jurisdiction of the debtor and its property wherever located.' That jurisdiction is not limited to the prevention of interference with the use of the property by the trustee; it 'extends also to the adjudication

of questions respecting the title.' *Ex parte Baldwin*, 291 U. S. 610, 616; *Thompson* v. *Texas Mexican Ry. Co.*, 328 U. S. 134, 140. It is the exclusive jurisdiction of the reorganization court which gives it power to preserve the railway as a unit and as a going concern and to prevent it from being divided up and dismembered piecemeal. Only in that way can continuous operation of the road be assured and a plan of reorganization be effected which not only safeguards the interests of the various claimants but is also compatible with the public interest. *Continental Bank* v. *Chicago, R. I. & P. R. Co.*, 294 U. S. 648; *Smith* v. *Hoboken Railroad, W. & S. C. Co., supra.*"

Reorganizations are particularly concerned with secured creditors. If they could stay out of every reorganization and rely solely on their security, no reorganization would be possible. Ordinary bankruptcies, on the other hand, are principally concerned with the orderly liquidation and distribution of the debtor's estate. It matters not in the accomplishment of this purpose that secured creditors stay out of the bankruptcy proceedings and rely solely on their security to satisfy their claims.

Prior to the decision in the *Gardner* case, *supra*, it had been held in *Board of Directors of St. Francis Levee District* v. *Kurn*, 98 F. 2d 394 (C. C. A. 8, 1938), cert. den. 305 U. S. 647, that taxes laid during the reorganization on real property on the basis of the betterment received by the property from the construction of levees, where the taxes under state law constituted a lien against the property assessed, were claims under Section 77 which the reorganization court could enjoin enforcement of and compel to be submitted to the court as bankruptcy claims within sixty days to determine their validity or be barred forever.

In corporate, non-railroad reorganizations under Chapter X of the National Bankruptcy Act claims of creditors

not against a debtor but only against his property have been held to come within the meaning of "claims" and "creditors" as there defined.

In re Sponsor Realty Corp., 48 F. Supp. 735 (S. D. N. Y., 1943);
In re R. A. Security Holdings, Inc., 46 F. Supp. 254 (E. D. N. Y., 1942), aff'd 134 F. 2d 164 (C. C. A. 2, 1943).

The same has been held to be true in Section 77B proceedings instituted by voluntary petition.

In re The Westover, Inc., 82 F. 2d 177 (C. C. A. 2, 1936).

Section 77 (b) of the National Bankruptcy Act speaks in words so broad in scope and so unmistakable in meaning that no further consideration of the matter by this Court beyond that already given is either necessary or appropriate. Judge Frank, in his dissenting opinion, in the court below, nowhere takes the position that the City was not a "creditor" within the meaning of the Act. On the contrary, his entire argument rests on the premise that the City was such a "creditor", entitled to notice by mail of the order barring unfiled claims.

(b)

The decision below is not in conflict with any other decisions either of the courts of appeal for other circuits or of this Court.

There is no conflict between the decision below and the decisions in *DeLaney* v. *City and County of Denver*, 185 F. 2d 246 (10th Cir., 1950), and *Clem* v. *Johnson*, 185 F. 2d 1011 (8th Cir., 1950), cert. den. 341 U. S. 909. The decision below was rendered in a railroad reorganization

proceeding under Section 77 while the two last-cited cases concerned ordinary bankruptcy proceedings.

In the case at bar, the City filed no claim or notice of lien and made no attempt to intervene in the reorganization proceedings, nor did it ever possess the liened real estate.

In the *DeLaney* case, *supra*, the City of Denver filed no formal claim or notice of lien in the bankruptcy proceedings but filed instead a petition seeking to intervene in order to assert its lien for unpaid personal property taxes against the proceeds from the sale by the trustee of the property taxed, which had never been in the City's possession. The decision pointed out that since the property subject to the tax lien was in the possession, and subject to the jurisdiction, of the bankruptcy court, the City's lien could be realized only in that court either by filing a claim or an intervening petition therefor.

In the *Clem* case, *supra*, an order was affirmed which granted a reclamation petition seeking surrender in the bankruptcy court from the bankrupt's trustee of an airplane on which the petitioner had a valid chattel mortgage granted by the bankrupt prior to his adjudication.

The holdings in both the *DeLaney* and *Clem* cases are therefore not in the least contrary to the holding in the present case, nor are they inconsistent with the dictum in *United States Bank* v. *Chase Bank*, 331 U. S. 28, 33 (1947), which states that the secured creditor of a bankrupt may disregard the bankruptcy proceeding, decline to file a claim and rely solely upon his security if that security is properly and solely in his possession, but must file a secured claim in order to retain his secured status if the security is within the jurisdiction of the bankruptcy court.

There is no conflict between the decision in the case at bar and the decision in *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306 (1950). That case dealt with what notice of periodic accountings must be given by trustees to the beneficiaries of common trust funds. In accordance with long-established principles as to the high duty of care owed by fiduciaries, particularly where their own honesty is at issue, this Court held that notice by publication to beneficiaries whose names and addresses were known by the trustees was insufficient under the special circumstances there involved, but recognized that no general rule applicable to all possible fact situations could be laid down and that notice by publication has in many different situations been held adequate.

In the case at bar the New Haven did not know whether the City had abandoned its stale, invalid claims, whether it still owned them, whether it had transferred or assigned them, and to whom such transfer or assignment might have been made. No accounting to known *cestuis que trust* for the personal probity and propriety of fiduciaries' actions to establish their possible *in personam* liability was involved. The New Haven's reorganization was essentially a proceeding *in rem*. See *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 241 (1934), and *Meek* v. *Centre County Banking Co.*, 268 U. S. 426, 429 (1925).

The filing of a petition in bankruptcy is a *caveat* to all the world. See *Mueller* v. *Nugent*, 184 U. S. 1, 14 (1892).

The burden rests on creditors having knowledge of a receivership or reorganization to make inquiry and to take whatever steps may be necessary to protect their rights.

Chicago Joint Stock Land Bank v. *Minn. L. & T. Co.*, 57 F. 2d 70 (C. C. A. 8, 1932);
Knapp v. *Detroit Leland Hotel*, 153 F. 2d 715 (C. C. A. 6, 1946).

Notice of bar orders limiting the time to file claims by publication only to such creditors has often been approved.

St. Louis & San Francisco R. R. Co. v. *Spiller*, 274 U. S. 304 (1927);

Chicago Joint Stock Land Bank v. *Minn. L. & T. Co., supra;*

Duebler v. *Sherneth Corp.*, 160 F. 2d 472 (C. C. A. 2, 1947);

Duryee v. *Erie R. Co.*, 76 F. Supp. 635 (N. D. Ohio, 1948), aff'd 175 F. 2d 58 (6th Cir., 1949), cert. den. 338 U. S. 861;

Remington on *Bankruptcy*, 5th Ed., Vol. 2, § 683, p. 117.

See:

Chicago, R. I. & P. Ry. Co. v. *Lincoln Horse & Mule Comm. Co.*, 284 Fed. 955, 957-8 (C. C. A. 8, 1922).

See also:

Mohonk Realty Corp. v. *Wise Shoe Stores*, 111 F. 2d 287, 290 (C. C. A. 2, 1940), cert. den. 311 U. S. 654.

Section 77 (c) (8) gives the judge in charge of a railroad reorganization specific authority to give notice of bar orders to creditors by publication. The district judge in the present case merely did what the statute allowed. Consequently, no valid objection to his actions may be taken.

(c)

The decision below is clearly correct.

The district court had both express and inherent jurisdiction to entertain and act upon the New Haven's petition.

Paragraph 2 of Part IX of its consummation order and final decree in the New Haven's reorganization proceedings reserved to it jurisdiction in sub-paragraph (d) to consider and act in the matter of any application for instructions with respect to the distribution of funds or securities in connection with the consummation order and to construe the plan of reorganization as to matters which may require construction, not dealt with in the consummation order, and in sub-paragraph (q) to take such further action as may be necessary to put into effect and carry out the consummation order and the plan of reorganization and all other orders relative thereto (R. 88, 90).

The consummation order did not deal with the City's unpaid assessments, and the New Haven petitioned the district court, under sub-paragraph (d), to ask the court to construe Section L of the plan of reorganization (R. 91) to determine whether that section was intended to deal with the City's unpaid assessments. The New Haven, under sub-paragraph (q), sought further relief, in the event of a favorable construction of the plan, to prevent the City from blocking the carrying out of the plan by insisting on payment of its assessments and asserting its liens therefor.

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The express reservations of jurisdiction in the consummation order under which the district court acted were both customary and proper.

In re Pittsburgh Terminal Coal Corp., 183 F. 2d 520 (3d Cir., 1950), cert. den. 340 U. S. 904;

Duryee v. *Erie R. Co.*, 175 F. 2d 58 (6th Cir., 1949), cert. den. 338 U. S. 861;
In re Hermitage Bldg. Corp., 100 F. 2d 597 (C. C. A. 7, 1938).

Even without such reservations, a court in charge of a reorganization has inherent power to see that a plan of reorganization is consummated, to protect the confirmation decree, to prevent interference with the execution of the plan, and to aid in the interpretation and operation of the plan.

North American Car Corp. v. *Peerless W. & V. Mach. Corp.*, 143 F. 2d 938 (C. C. A. 2, 1944);
Shores v. *Hendy Realization Co.*, 133 F. 2d 738 (C. C. A. 9, 1943);
Curtis v. *O'Leary*, 131 F. 2d 240 (C. C. A. 8, 1942).

Nowhere in the reorganization plan and orders is there any specific reference to the City's assessments. No specific reference to them, however, could be expected, since no claim therefor was ever filed or evidenced.

Had the City filed a claim, had the bankruptcy court overruled in whole or in part the New Haven's contention that the assessments were void, and had the correct amount due on the assessments been determined, then Section L of the plan of reorganization would have become applicable where it provides (R. 91):

"L. Claims against the principal debtor and secondary debtors, other than Old Colony, entitled to priority over their respective mortgages, and current liabilities and obligations incurred by the bankruptcy trustees during the reorganization proceedings, to the extent unpaid at the date of confirmation of the plan, shall be paid in cash or assumed by the reorganized company with the same relative priority

as they now have with respect to other obligations of such debtors."

Judge Hincks held that the word "Claims" in Section L meant "filed claims" particularly when read in the context of Sections 77 (c) and 77 (f) and other parts of Section 77 (R. 111). Since Section 77 (c) (7) denies any and all priority to claims not filed and the City never filed a claim, it had no "claim • • • entitled to priority" within the meaning of Section L of the plan.

Under Section R of the plan, "The construction of the plan by the court shall be final and conclusive" (R. 96). Judge Hincks' construction of Section L, therefore, finally determines any question as to the meaning of "claims" in that section.

"Claims" in Section L must refer to known and approved claims filed in the bankruptcy court, rather than to unknown, unfiled, contestable claims of which the Interstate Commerce Commission, the bankruptcy court and creditors had no knowledge and of which the validity and correct amount were never determined. Neither the commission nor the court could ever have intended to place on the debtor a burden of unknown quantity which could conceivably undo the entire work accomplished by the reorganization, nor would the creditors who filed claims ever have approved the plan on such an uncertain basis.

The purpose of reorganizations is to review all claims, including secured claims, against the debtor and its property, to eliminate those which are invalid, to ascertain the correct amount of those which are valid, and to scale down established claims to a workable basis. This purpose cannot be achieved if secured claimants can choose to leave the bankruptcy court unaware of their claims, to remain outside of the reorganization proceedings and to rely solely on their security, or if the bankruptcy court must accept

all secured claims at their asserted value without having an opportunity to review their validity and amount. These basic objectives of reorganization must be kept in mind in the determination of the meaning of Section L in the plan.

The consummation order nowhere referred to the City's assessments, although it listed specifically the obligations to be paid in cash or to be assumed by the reorganized debtor (R. 85-86). All other claims not so listed were declared to be void and unenforcible, and their prosecution or enforcement was enjoined (R. 84-85, 87).

The City had actual knowledge of the New Haven's reorganization proceedings almost from their inception. These proceedings lasted twelve years. The City knew that the New Haven had always refused to pay the assessments here involved on the ground that they were invalid and void. Some of the assessments went back as far as 1894 and none was later than 1930. The New Haven continued during its reorganization to refuse to pay these assessments.

The City nonetheless took no steps of any kind to protect its rights either during or after the reorganization, until the petition brought in the district court by the New Haven in the present case stirred up its answer. The City was guilty of gross laches, which bar its claims forever.

In re Chicago, R. I. & P. Ry. Co., 168 F. 2d 587 (C. C. A. 7, 1948), cert. den. 335 U. S. 855;
McColgan v. *Maier Brewing Co.*, 134 F. 2d 385 (C. C. A. 9, 1943), cert. den. 320 U. S. 737;
Piedmont Ice & Coal Co. v. *American Service Co.*, 130 F. 2d 78 (C. C. A. 4, 1942);
In re Thornycroft Inc., 120 F. 2d 469 (C. C. A. 2, 1941);

In re Missouri Pac. R. Co., 64 F. Supp. 64 (E. D. Mo., 1945), aff'd *sub nom. Comstock* v. *Group of Institutional Investors*, 163 F. 2d 350 (C. C. A. 8, 1947), aff'd 335 U. S. 211 (1948), reh. den. 335 U. S. 837.

Section 77 (f) of the National Bankruptcy Act, 11 U. S. C. A., § 205 (f), makes the plan of reorganization and the order of confirmation thereof binding upon "all creditors secured or unsecured, whether or not adversely affected by the plan, and whether or not their claims shall have been filed", and directs that the "property dealt with by the plan, when transferred and conveyed to the debtor or to the other corporation or corporations provided for by the plan, or when retained by the debtor pursuant to the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, and the debtor shall be discharged from its debts and liabilities, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention * * *." The all-inclusive definition of "claims" and "creditors" in Section 77 (b) has already been explained. These words have the same meaning in Section 77 (f).

The consummation order and final decree which terminated the New Haven's reorganization also irrevocably and expressly terminated all claims or liens against its property which the City might up to that time have asserted. New rights to this property were thereupon established in new persons in accordance with the plan of reorganization, and they have for five years acted in reliance on their new rights. Modification of this plan to the prejudice of these new rights is no longer permissible, and is beyond the power of the reorganization court.

Detroit Harbor Terminals, Inc. v. *Kuschinski*, 181 F. 2d 541 (6th Cir., 1950);

In re Higbee Co., 164 F. 2d 426 (C. C. A. 6, 1947);
Duebler v. *Sherneth Corp.*, *supra*;
In re Peyton Realty Co., 148 F. 2d 771 (C. C. A. 3, 1945);
Standard Steel Works v. *American Pipe & Steel Corp.*, 111 F. 2d 1000 (C. C. A. 9, 1940);
In re Corona Radio & Television Corp., 102 F. 2d 959 (C. C. A. 7, 1939).

CONCLUSION.

For the foregoing reasons it is prayed that this petition for a writ of certiorari be denied.

Respectfully submitted,

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ROBERT M. PEET,
Of Counsel.

APPENDIX A.

Section 77 (a), 11 U. S. C. A., § 205 (a), reads in part as follows:

> "If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose."

Section 77 (b), 11 U. S. C. A., § 205 (b), reads in part as follows:

> "The term 'creditors' shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.
>
> "The term 'claims' includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interests of whatever character."

Section 77 (c) (1), 11 U. S. C. A., § 205 (c) (1), reads in part as follows:

> "The judge shall forthwith (and in pending proceedings immediately upon August 27, 1935) require the debtor to give such notice as the order may direct to the mortgage trustees, creditors and stockholders, and to cause publication thereof for such

period and in such newspapers as the judge may direct, of a hearing to be held not later than thirty days after the date of such order, at which hearing or any adjournment thereof the judge shall appoint one or more trustees of the debtor's property."

Section 77 (c) (4), 11 U. S. C. A., § 205 (c) (4), reads in part as follows:

"The judge * * * shall direct the officers of the debtor, or the trustee or trustees, within such time as the judge shall set, to prepare and file with the court a list of all known bondholders and creditors of the debtor, and the amounts and character of their debts, claims, and securities, and the last known post-office address or place of business of each bondholder and creditor, * * *"

Section 77 (c) (7), 11 U. S. C. A., § 205 (c) (7), reads in part as follows:

"The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown, the manner in which such claims may be filed or evidenced and allowed, and for the purposes of the plan and its acceptance, after notice and hearing, the division of creditors and stockholders into classes according to the nature of their respective claims and interests."

Section 77 (c) (8), 11 U. S. C. A., § 205 (c) (8), reads as follows:

"The judge shall cause reasonable notice of the period in which claims may be filed, of hearings on application for the dismissal of the proceedings, or for the final allowance of fees or expenses to be given

creditors and stockholders by publication or otherwise."

Section 77 (f), 11 U. S. C. A., § 205 (f), reads in part as follows:

"Upon confirmation by the judge, the provisions of the plan and of the order of confirmation shall, subject to the right of judicial review, be binding upon the debtor, all stockholders thereof, including those who have not, as well as those who have, accepted it, and all creditors secured or unsecured, whether or not adversely affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it."

Section 77 (l), 11 U. S. C. A., § 205 (l), reads as follows:

"In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."